

State Ethics Commission

Basic Ethics & Lobbying Education Presentation

THE STATE GOVERNMENT ETHICS ACT Chapter 138A & Chapter 120C

Rev'd 08/20/08

OVERVIEW

- I. STATE ETHICS COMMISSION
- II. INDIVIDUALS COVERED BY THE ETHICS ACT
- III. GENERAL POWERS OF THE COMMISSION
- IV. STATEMENTS OF ECONOMIC INTEREST
- V. CONFLICT OF INTEREST STANDARDS
- VI. MISCELLANEOUS PROHIBITIONS
- VII. GIFTS BAN
- VIII. LOBBYING LAW FOR PUBLIC SERVANTS

THROUGHOUT THIS PRESENTATION, ** DENOTES
AMENDMENTS MADE DURING 2008 LEGISLATIVE SESSION

I. THE STATE ETHICS COMMISSION

NAME	APPOINTING AUTHORITY	TERM
The Honorable Robert Farmer (D), Chairman	Governor	1/1/2007 – 12/31/2009
Jane Flowers Finch (D), Vice-Chairman	Governor	1/1/2007 – 12/31/2011
The Honorable Alice Stubbs (R)	Governor	1/1/2007 – 12/31/2009
Ben Mayo Boddie (R)	Governor	1/23/2007 – 12/31/2011
Barbara Allen (D)	Speaker	1/1/2007 – 12/31/2010
William P. Pope (R)	Speaker	1/1/2007 – 12/31/2008
Clarence G. Newsome (D)	President Pro Tempore	1/23/2007 – 12/31/2010
John G. “Jerry” Blackmon (R)	President Pro Tempore	4/10/2007 – 12/31/2008

II. Individuals Covered

- A. JUDICIAL OFFICERS -- G.S. 138A-3(19):
 - i. JUDGES
 - ii. DISTRICT ATTORNEYS
 - iii. CLERKS OF COURT
- B. LEGISLATORS -- G.S. 138A-3(22):
 - i. MEMBERS OF GENERAL ASSEMBLY
 - ii. APPOINTEES & PERSONS ELECTED BEFORE TAKING OFFICE
- C. LEGISLATIVE EMPLOYEES — G.S. 120C-100(a)(6)
 - i. EMPLOYEES & OFFICERS OF GENERAL ASSEMBLY
 - ii. CONSULTANTS & COUNSEL TO GA COMMITTEES PAID BY STATE MONEY
 - iii. EXCLUDES NONSUPERVISORY FACILITY MAINTENANCE & FOOD SERVICES STAFF AND PAGES

D. PUBLIC SERVANTS—G.S. 138A-3(30):

- i. CONSTITUTIONAL OFFICERS & PRINCIPAL DEPARTMENT HEADS
 - THEIR CHIEF DEPUTIES/ADMINISTRATIVE ASSISTANTS
 - CONFIDENTIAL ASSISTANTS & SECRETARIES OF ALL
- ii. GOVERNOR'S OFFICE EMPLOYEES
- iii. EMPLOYEES DESIGNATED POLICYMAKING OR MANAGERIAL EXEMPT
- iv. OTHER EMPLOYEES AS SPECIALLY DESIGNATED BY THE GOVERNOR
- v. JUDICIAL EMPLOYEES — AOC DIRECTOR & ASST. DIRECTOR, CHIEF JUSTICE DESIGNEES
- vi. VOTING MEMBERS OF STATE NON-ADVISORY BOARDS
 - INCLUDING EX OFFICIO MEMBERS AND PERMANENT DESIGNEES

vii. UNC SYSTEM:

- BOARD OF GOVERNORS -- VOTING MEMBERS
- PRESIDENT & VICE-PRESIDENTS
- CHANCELLORS & VICE CHANCELLORS OF ALL INSTITUTIONS
- VOTING MEMBERS OF BOARDS OF TRUSTEES OF EACH UNIVERSITY

viii. NC COMMUNITY COLLEGE SYSTEM (NCCCS):

- STATE BOARD -- VOTING MEMBERS
- PRESIDENT & CHIEF FINANCIAL OFFICER OF NCCCS
- PRESIDENT, CFO, & CHIEF ADMINISTRATIVE OFFICER OF EACH COLLEGE
- VOTING MEMBERS OF BOARDS OF TRUSTEES OF EACH COLLEGE

AGENCY HEADS

(G.S. 138A-15)

- INCLUDES THE CHAIR OF EACH BOARD SUBJECT TO CHAPTER 138A
- “TAKE AN ACTIVE ROLE IN FURTHERING ETHICS IN PUBLIC SERVICE” – BE A **LEADER**
- RECORD ACTUAL OR POTENTIAL CONFLICTS IN MINUTES
- “ETHICS REMINDER” AT BEGINNING OF OFFICIAL BOARD MEETINGS
- KEEP THE ETHICS COMMISSION INFORMED:
 - OF CHANGES IN MEMBERSHIP OR EMPLOYMENT
 - OF NEW MEMBERS OR EMPLOYEES
 - OF RESIGNATIONS OR DEPARTURES
- PROVIDE NEW PEOPLE WITH ALL NECESSARY INFORMATION:
 - COPIES OF ETHICS LAW
 - DISCLOSURE FORMS (SEI)

ETHICS LIAISONS

(G.S. 138A-14 AND -15)

- OVER 270 ETHICS LIAISONS.
- G.S. 138A-14 REQUIRES THAT AN ETHICS LIAISON BE DESIGNATED BY EACH AGENCY OR BOARD.
- DUTIES — ASSIST AGENCY HEAD WITH:
 - SEI COMPONENT: COMMUNICATE THE APPOINTMENT AND RESIGNATION OF COVERED PERSONS. COMPLY WITH PRE-HIRE OR APPOINTMENT SEI EVALUATION REQUIREMENT.
 - “ETHICS REMINDER”: ENSURE USE OF CONFLICT OF INTEREST AWARENESS STATEMENT AT BEGINNING OF BOARD MEETINGS.
 - KEEP COVERED PERSONS INFORMED OF SEI FILING & EDUCATION REQUIREMENTS. PROVIDE GUIDANCE ON GIFTS BAN AND CONFLICTS PROVISIONS.
 - DISSEMINATE INFORMATION DISTRIBUTED BY ETHICS COMMISSION.

III. COMMISSION'S GENERAL POWERS

(ADVISORY OPINIONS, EDUCATION, COMPLAINTS)

A. ADVISORY OPINIONS (G.S. 138A-13)

- i. THE STATE ETHICS COMMISSION HAS AUTHORITY TO ISSUE ADVISORY OPINIONS AT THE REQUEST OF:
 - A PUBLIC SERVANT OR LEGISLATIVE EMPLOYEE, OR THEIR SUPERVISOR, APPOINTING AUTHORITY, OR ATTORNEY,
 - ETHICS LIAISON FOR AGENCY OR BOARD,
 - THE STATE ETHICS COMMISSION, ON ITS OWN MOTION.
- ii. REQUESTS FOR ADVISORY OPINIONS MUST:
 - BE IN WRITING (BY REGULAR MAIL OR E-MAIL TO ethics.commission@ncmail.net) AND
 - RELATE PROSPECTIVELY TO REAL OR REASONABLY ANTICIPATED FACT SETTINGS OR CIRCUMSTANCES (NO HISTORICAL REQUESTS OR HYPOTHETICALS).
- iii. EXCEPT AS DESCRIBED ABOVE, ADVICE WILL NOT BE ISSUED TO PERSONS SEEKING AN OPINION AS TO THE LEGALITY OF THE ACTIONS OF A **THIRD PARTY**.
- iv. COMMISSION STAFF ALSO ISSUES ADVICE BY E-MAIL AND IN RESPONSE TO TELEPHONE CALLS.

FORMAL ADVISORY OPINIONS – TO PUBLIC SERVANTS & LEGISLATIVE EMPLOYEES

- i. IMMUNITY: FORMAL OPINIONS IMMUNIZE PUBLIC SERVANTS & LEGISLATIVE EMPLOYEES FROM:
 - INVESTIGATION BY THE COMMISSION
 - ADVERSE ACTION BY THE EMPLOYING ENTITY
 - INVESTIGATION BY THE SECRETARY OF STATE'S OFFICE.
- ii. PUBLICATION: REDACTED FORMAL AOs WILL BE PUBLISHED WITHIN 30 DAYS OF ISSUANCE BY THE COMMISSION.**
- iii. CONFIDENTIALITY: REQUESTS FOR ADVICE (BOTH FORMAL ADVISORY OPINIONS AND INFORMAL ADVICE) AND RELATED INFORMATION ARE CONFIDENTIAL AND ARE NOT PUBLIC RECORDS.

FORMAL ADVISORY OPINIONS REQUESTED BY LEGISLATORS
(G.S. 138A-13(b) and 120-104):

- i. ARE ISSUED BY THE ETHICS COMMISSION AS
RECOMMENDED FORMAL ADVISORY OPINIONS
- ii. IMMUNITY ATTACHES UPON COMMISSION'S ISSUANCE OF
THE OPINION
- iii. TRANSMITTED BY COMMISSION TO THE LEGISLATIVE
ETHICS COMMITTEE
- iv. THE LEGISLATIVE ETHICS COMMITTEE MAY "MODIFY OR
OVERRULE" ALL RECOMMENDED ADVISORY OPINIONS
ISSUED TO LEGISLATORS BY THE ETHICS COMMISSION.
- v. FINAL ACTION BY THE COMMITTEE "SHALL CONTROL"

B. EDUCATION (G.S. 138A-14 AND 120C-103(a))
ETHICS AND LOBBYING EDUCATION IS REQUIRED OF:

- i. ALL PUBLIC SERVANTS & THEIR IMMEDIATE STAFFS:
 - WITHIN SIX MONTHS OF ELECTION, APPOINTMENT, OR EMPLOYMENT
- ii. ALL LEGISLATORS AND LEGISLATIVE EMPLOYEES:
 - WITHIN THREE MONTHS OF ELECTION, APPOINTMENT, OR
EMPLOYMENT
- iii. REFRESHER TRAINING IS REQUIRED AT LEAST EVERY
TWO (2) YEARS THEREAFTER. LEGISLATIVE EMPLOYEES
ARE NOW SUBJECT TO REFRESHER TRAINING
REQUIREMENT.
- iv. EDUCATION REQUIREMENT DOES NOT APPLY TO JUDICIAL
OFFICERS.

C. COMPLAINTS OF UNETHICAL CONDUCT (Inquiries - G.S. 138A-12):

- i. MAY BE INITIATED AGAINST ALL COVERED PERSONS AND LEGISLATIVE EMPLOYEES (JUDICIAL OFFICERS INCLUDED)
- ii. MUST BE IN WRITING, SWORN, AND STATE SPECIFIC FACTS INDICATING THAT A VIOLATION OF ETHICS ACT OR CHAPTER 120 (LEGISLATIVE ETHICS ACT) HAS OCCURRED. (COMPLAINTS FILED BY PUBLIC SERVANTS OR INITIATED BY THE COMMISSION DO NOT HAVE TO BE SWORN OR VERIFIED.**)
- iii. MUST BE FILED WITHIN TWO YEARS OF DATE THE FILER KNEW OR SHOULD HAVE KNOWN OF THE IMPROPER CONDUCT
- iv. SUBJECT TO DISMISSAL FOR FAILURE TO SATISFY BASIC REQUIREMENTS
- v. COMPLAINTS, RESPONSES, AND OTHER INVESTIGATIVE DOCUMENTS RELATED TO AN INQUIRY ARE CONFIDENTIAL, UNLESS:
 - RESPONDENT REQUESTS THAT RECORDS BE MADE PUBLIC, OR
 - A HEARING COMMENCES, OR
 - SANCTIONS ARE RECOMMENDED WITHOUT HEARING.

- v. IF PROBABLE CAUSE IS FOUND:
 - FOR PUBLIC SERVANTS: HEARING BEFORE STATE ETHICS COMMISSION
 - FOR LEGISLATORS: REFER TO LEGISLATIVE ETHICS COMMITTEE
 - FOR JUDICIAL OFFICERS: REFER TO APPROPRIATE PERSON
 - JUDICIAL STANDARDS COMMISSION FOR JUDGES & JUSTICES,
 - SENIOR RESIDENT SUPERIOR COURT JUDGE FOR DAs,
 - CHIEF DISTRICT COURT JUDGE FOR CLERKS OF COURT

D. VIOLATION CONSEQUENCES

G.S. 138A-12(k)(3) & 138A-45

- PUBLIC SERVANTS ON **BOARDS**:
SUBJECT TO REMOVAL FOR WILLFUL
FAILURE TO COMPLY WITH ETHICS ACT.
- PUBLIC SERVANTS WHO ARE **EMPLOYEES**:
WILLFUL NONCOMPLIANCE CONSIDERED
VIOLATION OF WRITTEN WORK ORDER.

IV. STATEMENTS OF ECONOMIC INTEREST

(G.S. 138A-21 TO -27)

A. STATEMENTS OF ECONOMIC INTEREST MUST BE FILED BY MOST "COVERED PERSONS"

- CP = LEGISLATORS, JUDICIAL OFFICERS & PUBLIC SERVANTS
- CERTAIN EMPLOYEES WHO MAKE UNDER \$60K PER YEAR ARE EXEMPT

i. ANNUAL FILING DEADLINE: APRIL 15TH

ii. CANDIDATES FOR A COVERED OFFICE MUST FILE THE STATEMENT WITHIN 10 DAYS OF THE FILING DEADLINE FOR THAT OFFICE.

iii. INDIVIDUALS NEWLY HIRED OR APPOINTED:

- A PROSPECTIVE COVERED PERSON "SHALL NOT BE APPOINTED, EMPLOYED, OR RECEIVE A CERTIFICATE OF ELECTION" PRIOR TO THE RECEIPT AND **EVALUATION** OF THEIR SEI BY THE ETHICS COMMISSION. G.S. 138A-22(a).
- EXCEPTIONS FOR:
 - PROVISIONAL APPOINTMENTS/HIRES BY UNIVERSITIES AND COMMUNITY COLLEGES: SEI MUST BE **FILED**, BUT NEED NOT BE EVALUATED
 - APPOINTEES OF CONSTITUTIONAL OFFICERS DURING FIRST 60 DAYS OF TERM: SEI MUST BE FILED WITHIN 60 DAYS OF APPOINTMENT

- B. PENALTIES FOR LATE OR NON-FILING OF SEIs (G.S. 138A-25):
 - i. \$250 CIVIL PENALTY
 - ii. REMOVAL BY COMMISSION OR RECOMMEND REMOVAL BY APPOINTING AUTHORITY FOR WILLFUL NONFEASANCE.
- C. OTHER PENALTIES:
 - i. CLASS 1 MISDEMEANOR FOR KNOWING CONCEALMENT OR FAILURE TO DISCLOSE (G.S. 138A-26)
 - ii. CLASS H FELONY FOR KNOWINGLY PROVIDING FALSE INFORMATION ON AN SEI (G.S. 138A-27)
- D. COMMISSION IS REQUIRED TO EVALUATE EACH SEI.
- E. SEIs AND WRITTEN EVALUATIONS ARE PUBLIC RECORDS ONCE THE INDIVIDUAL IS APPOINTED OR EMPLOYED. (G.S. 138A-23).

STATEMENTS OF ECONOMIC INTEREST

(G.S. 138A-21 TO -27)

WHO IS INCLUDED IN THE DISCLOSURE?

- YOURSELF
- YOUR SPOUSE (UNLESS YOU ARE LEGALLY SEPARATED)
- MEMBERS OF YOUR EXTENDED FAMILY WHO *LIVE WITH YOU* (RESIDE IN YOUR HOUSEHOLD)

STATEMENTS OF ECONOMIC INTEREST

(G.S. 138A-21 TO -27)

"EXTENDED FAMILY" CONSISTS OF

- YOUR SPOUSE
- YOU & YOUR SPOUSE'S LINEAL DESCENDENTS AND THEIR SPOUSES:
 - CHILDREN
 - GRANDCHILDREN
 - GREAT-GRANDCHILDREN
- YOU & YOUR SPOUSE'S LINEAL ASCENDANTS AND THEIR SPOUSES:
 - PARENTS
 - GRANDPARENTS
 - GREAT-GRANDPARENTS
- YOU AND YOUR SPOUSE'S SIBLINGS AND THEIR SPOUSES.

SEI FILING TIPS

ANSWER *EVERY* QUESTION – EVEN IF THE ANSWER IS "NONE" OR "N/A"

MAKE SURE YOUR SEI IS SIGNED & NOTARIZED

YOU MUST NOW DISCLOSE CERTAIN INFORMATION CONCERNING OUT-OF-STATE GIFTS OR "SCHOLARSHIPS":

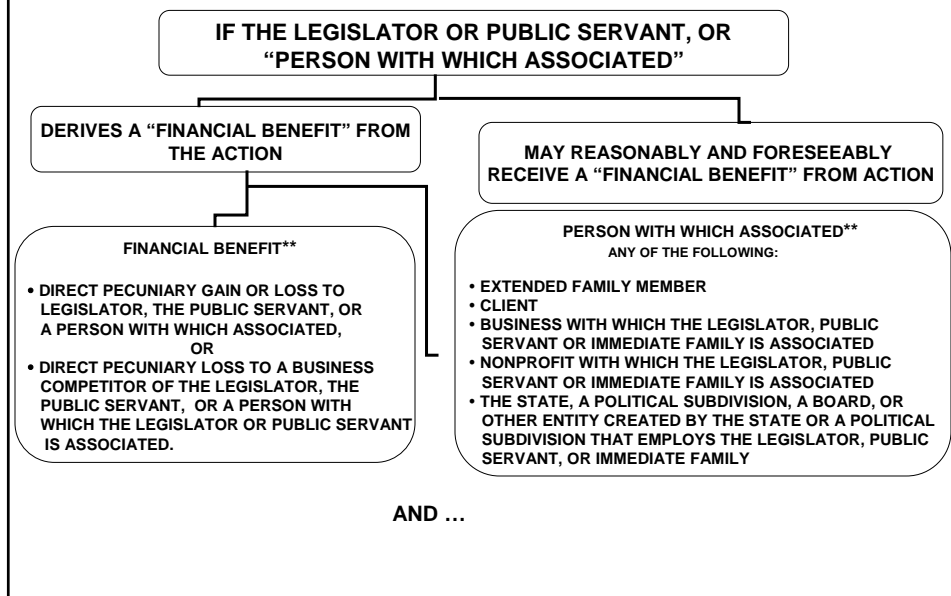
- FILER'S OPTION: EITHER ON SEI OR WITH THE SECRETARY OF STATE
- ITEMS RECEIVED WITH A TOTAL VALUE OF \$200 PER CALENDAR QUARTER GIVEN FOR THE PURPOSE OF LOBBYING IF RECEIVED WHILE YOU AND THE DONOR WERE OUTSIDE NC
- "SCHOLARSHIPS" RELATED TO YOUR PUBLIC POSITION WITH A VALUE OF OVER \$200 IF THE DONOR IS OUTSIDE NORTH CAROLINA

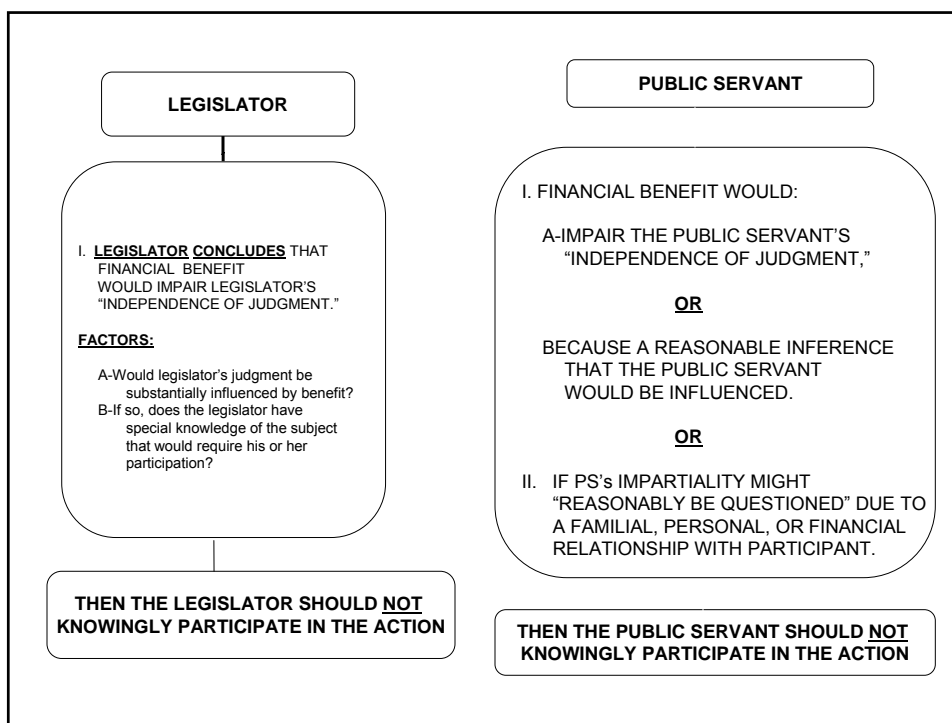
* "SCHOLARSHIP" IS DEFINED AS A "GRANT-IN-AID TO ATTEND A CONFERENCE, MEETING, OR OTHER SIMILAR EVENT."
- SCHOLARSHIPS FROM A NONPARTISAN ORGANIZATION OF WHICH THE GENERAL ASSEMBLY IS A MEMBER THAT ARE GIVEN TO A LEGISLATOR OR LEGISLATIVE EMPLOYEE GENERALLY DO NOT HAVE TO BE REPORTED. ** Effective 1/1/07

V. General Conflicts Standards

- A. APPLICABLE TO OFFICIAL OR LEGISLATIVE ACTIONS
- B. G.S. 138A-31(a):
- i. PROHIBITS COVERED PERSON OR LEGISLATIVE EMPLOYEE
 - ii. FROM KNOWINGLY USING POSITION IN AN OFFICIAL OR LEGISLATIVE ACTION
 - iii. THAT WOULD FINANCIALLY BENEFIT:
 - THE PERSON, PERSON'S EXTENDED FAMILY, OR BUSINESS WITH WHICH ASSOCIATED
 - iv. EXCLUDES FINANCIAL BENEFITS THAT ARE:
 - AVAILABLE ON THE SAME TERMS TO OTHER INDIVIDUALS
 - REMOTE, TENUOUS, OR SPECULATIVE
 - BENEFITS ALLOWED UNDER G.S. 138A-38

C. §138A-36 & -37: MAY LIMIT LEGISLATIVE OR OFFICIAL ACTION





D. "SAFE HARBORS" (138A-38)

YOU MAY TAKE LEGISLATIVE OR OFFICIAL ACTION IF

- i. THE BENEFIT IS NO GREATER THAN BENEFIT TO ALL MEMBERS OF PROFESSION, OCCUPATION, OR GENERAL CLASS
- ii. ACTION WOULD AFFECT COVERED PERSON'S COMPENSATION & ALLOWANCES AS A COVERED PERSON
- iii. A WRITTEN ADVISORY OPINION AUTHORIZED THE PARTICIPATION
- iv. BEFORE PARTICIPATING, PUBLIC SERVANT DISCLOSED INTEREST TO EMPLOYING ENTITY WHICH DETERMINED INTEREST WOULD NOT INFLUENCE PS & DETERMINATION WAS FILED WITH THE COMMISSION
- v. YOU ARE PERFORMING MINISTERIAL ACT

- vi. **NO QUORUM -- COVERED PERSON MAY BE INCLUDED FOR PURPOSES OF ESTABLISHING A QUORUM**
- vii. **PUBLIC SERVANT IS THE ONLY INDIVIDUAL HAVING LEGAL AUTHORITY TO TAKE AN OFFICIAL ACTION & DISCLOSES INTEREST.**
- viii. **COMMUNITY COLLEGE OFFICERS & BOARD MEMBERS MAY SERVE ON NONPROFITS ESTABLISHED TO AID THE COMMUNITY COLLEGE UNDER CERTAIN CIRCUMSTANCES.****
- ix. **LEGISLATORS EMPLOYED OR RETAINED BY GOVERNMENTAL UNITS MAY TAKE LEGISLATIVE ACTION ON BEHALF OF THE GOVERNMENTAL UNIT IF ONLY MEMBER OF THE CHAMBER ELECTED FROM THAT DISTRICT AND RELATIONSHIP IS DISCLOSED.****

WHAT TO DO IF YOU HAVE A CONFLICT?

- **ADVISE THE PRESIDING OFFICER OR EMPLOYING ENTITY REASONS FOR ABSTENTION IN WRITING**
- **REFRAIN FROM PARTICIPATING IN WRITING OR VERBALLY**
- **ABSTAIN FROM VOTING**

VI. MISCELLANEOUS PROHIBITIONS

- A. 138A-33: PROHIBITS PERSONAL FINANCIAL GAIN BY PUBLIC SERVANT OR LEGISLATIVE EMPLOYEE FOR PERFORMING OFFICIAL DUTIES
- B. 138A-32(h): PROHIBITS RECEIPT OF HONORARIA BY COVERED PERSON (INCLUDING JUDICIAL OFFICERS) UNDER CERTAIN CIRCUMSTANCES
- C. 138A-34: PROHIBITS USE OF INSIDE INFORMATION OBTAINED IN COURSE OF DUTIES OR FOR PRIVATE GAIN
- D. 138A-40: PROHIBITS EMPLOYMENT AND SUPERVISION OF FAMILY MEMBERS, EXCEPT FOR CERTAIN GENERAL ASSEMBLY POSITIONS.

- E. 138A-31(b):
 - i. PROHIBITS COVERED PERSON FROM MENTIONING OF PERMITTING ANOTHER TO MENTION "PUBLIC POSITION"
 - ii. IN NONGOVERNMENTAL ADVERTISING
 - iii. ADVANCING PRIVATE INTEREST OF COVERED PERSON OR OTHERS
 - iv. EXCEPTIONS:
 - POLITICAL ADVERTISING
 - NEWS STORIES OR ARTICLES
 - DIRECTORIES OR BIOGRAPHICAL LISTINGS
 - CHARITABLE SOLICITATIONS FOR 501(c)(3)
 - v. "ADVERTISING" ≠ DISCLOSURE OF POSITION TO INDIVIDUAL CUSTOMER OR CLIENT WHEN MATERIAL.

F. 138A-31(c):

- i. PROHIBITS USE OF STATE FUNDS
- ii. FOR ADVERTISEMENT OR PUBLIC SERVICE ANNOUNCEMENTS
- iii. IN NEWSPAPER, RADIO, T.V., MAGAZINE, BILLBOARDS
- iv. CONTAINING COVERED PERSON'S NAME, PICTURE, OR VOICE.
- v. EXCEPTIONS:
 - STATE OR NATIONAL EMERGENCY AND ANNOUNCEMENT NECESSARY TO OFFICIAL FUNCTION
 - INAPPLICABLE TO PUBLIC RADIO OR T.V. FUNDRAISERS

GIFTS: 138A-32

OTHER LAWS, RULES, OR REGULATIONS

**ALWAYS THINK ABOUT AND CHECK FOR
THE APPLICABILITY OF OTHER LAWS**

133-32: GIFTS TO/FROM CONTRACTORS

14-234: "SELF-DEALING" STATUTE

AGENCY OR DEPARTMENT RULES/POLICIES

VII. GIFTS: 138A-32

- A. 138A-32(a): PROHIBITS COVERED PERSON (INCLUDING JUDICIAL OFFICER) OR LEGISLATIVE EMPLOYEE FROM:
 - i. KNOWINGLY ACCEPTING ANYTHING OF VALUE, DIRECTLY OR INDIRECTLY
 - ii. FOR THEMSELVES OR ANOTHER
 - iii. IN RETURN FOR BEING INFLUENCED IN OFFICIAL DUTIES.
- B. 138A-32(b): PROHIBITS COVERED PERSON FROM CHARITABLE SOLICITATIONS OF SUBORDINATE STATE EMPLOYEES
 - i. EXCEPTIONS:
 - GENERIC SOLICITATIONS TO A CLASS
 - SERVING AS HONORARY STATE EMPLOYEES COMBINED CAMPAIGN HEAD

- C. 138A-32(c): PROHIBITS LEGISLATOR, OR LEGISLATIVE EMPLOYEE FROM KNOWINGLY ACCEPTING A GIFT FROM A REGISTERED LOBBYIST (L), LOBBYIST PRINCIPAL (LP), OR LEGISLATIVE LIAISON (LL).

PUBLIC SERVANTS CANNOT KNOWINGLY ACCEPT A GIFT FROM A REGISTERED LOBBYIST (L), OR LOBBYIST PRINCIPAL (LP)

REGISTRATION IS NOW THE KEY – SECRETARY OF STATE

- D. 138A-32(d): PROHIBITS PUBLIC SERVANT FROM KNOWINGLY ACCEPTING A GIFT FROM AN "INTERESTED PERSON" (IP):
 - i. SEEKING/DOING BUSINESS WITH PUBLIC SERVANT'S EMPLOYING ENTITY
 - ii. ENGAGED IN ACTS REGULATED/CONTROLLED BY PUBLIC SERVANT'S EMPLOYING ENTITY
 - iii. HAVING FINANCIAL INTERESTS SUBSTANTIALLY AND MATERIALLY AFFECTED BY DOING/NOT DOING PUBLIC SERVANT'S OFFICIAL DUTY.

NOTE: "PERSON" INCLUDES INDIVIDUALS, ORGANIZATIONS, OR GROUPS OF PERSONS ACTING TOGETHER. NOW EXCLUDES STATE AND LOCAL ENTITIES.

**GIFTS -- 138A-3(15):
DEFINITION OF "GIFT"**

NOT EVERYTHING IS A GIFT:

THINGS FOR WHICH YOU PAID MARKET OR FACE VALUE

LOANS AND SCHOLARSHIPS AVAILABLE TO EVERYONE AND
ON THE SAME TERMS,

ARMS-LENGTH BUSINESS TRANSACTIONS

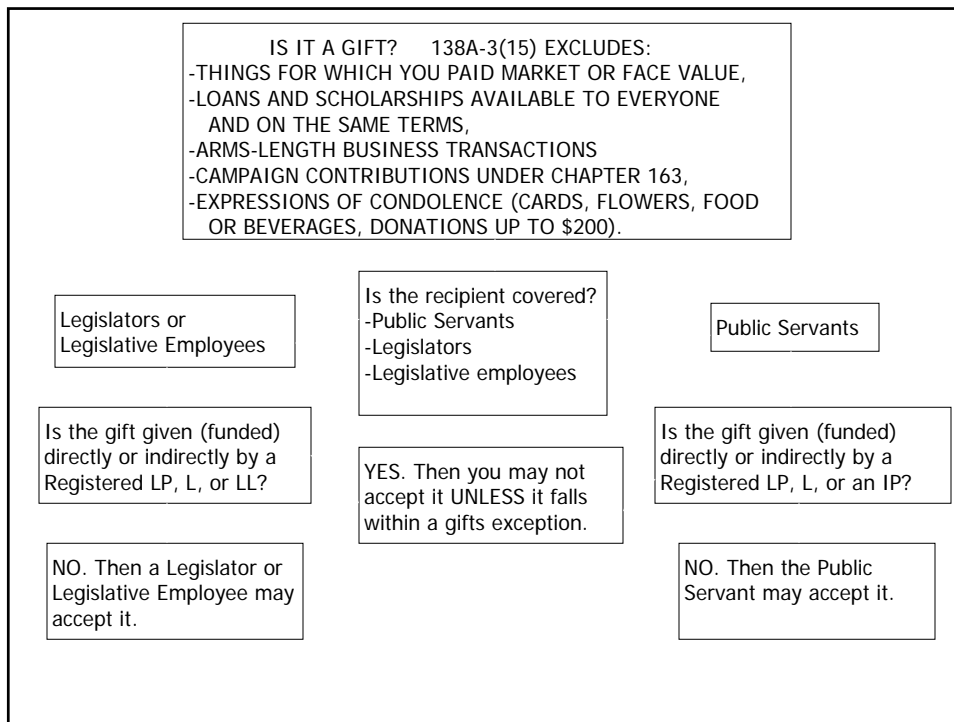
CAMPAIGN CONTRIBUTIONS

EXPRESSIONS OF CONDOLENCE (CARDS, FLOWERS, FOOD
OR BEVERAGES, MEMORIAL DONATIONS UP TO \$200).

INDIRECT GIFTS

**E. GIFTS ALSO MAY NOT BE ACCEPTED INDIRECTLY
(THROUGH AN INTERMEDIARY) IF RECIPIENT
OBTAINED THE GIFT FROM AN INTERMEDIARY
WHO:**

- i. RECEIVED GIFT FROM A REGISTERED LOBBYIST,
LOBBYIST PRINCIPAL, OR "INTERESTED PERSON,"
- ii. WHO INTENDED LEGISLATOR, PUBLIC SERVANT, OR
LEGISLATIVE EMPLOYEE TO RECEIVE THE GIFT, AND
- iii. RECIPIENT KNEW OF THE SOURCE AND THAT HE OR
SHE WAS INTENDED AS THE ULTIMATE RECIPIENT.



SPECIAL GIFTS: UNIVERSITY ATHLETIC TICKETS 120C-501(e)

- F. THE UNIVERSITY OF NORTH CAROLINA, ITS CONSTITUENT INSTITUTIONS, OR THEIR LEGISLATIVE LIAISONS MAY NOT GIVE DESIGNATED INDIVIDUALS (LEGISLATORS, LEGISLATIVE EMPLOYEES, PUBLIC SERVANTS) ATHLETIC TICKETS.

NOTE: THIS IS FOUND IN THE LOBBYING LAW, NOT THE ETHICS LAW.

IF YOU RECEIVE AN IMPERMISSIBLE GIFT
PROMPTLY ...

- DECLINE IT
- RETURN IT
- PAY FAIR MARKET VALUE FOR IT
- DONATE IT TO CHARITY
- DONATE IT TO THE STATE

...AND KEEP A WRITTEN RECORD

THE GIFTS EXCEPTIONS

1. FOOD AND BEVERAGES AT CERTAIN GATHERINGS**.
2. INFORMATIONAL MATERIALS RELEVANT TO RECIPIENT'S DUTIES.
3. EXPENSES OF ATTENDING CERTAIN "MEETINGS"
4. A PLAQUE OR SIMILAR NONMONETARY MEMENTO RECOGNIZING SERVICE TO A FIELD OR CHARITY.
5. GIFTS ACCEPTED ON BEHALF OF THE STATE FOR USE BY** OR BENEFIT OF THE STATE.
6. ANYTHING MADE AVAILABLE TO THE GENERAL PUBLIC OR ALL OTHER STATE EMPLOYEES BY L, LP, OR IP
7. GIFTS FROM THE RECIPIENT'S EXTENDED FAMILY, OR A MEMBER OF THE SAME HOUSEHOLD.

8. GIFTS GIVEN TO A PUBLIC SERVANT RESPONSIBLE FOR CONDUCTING INDUSTRY RECRUITMENT, INTERNATIONAL TRADE, OR TOURISM PROMOTION
9. GIFTS VALUED AT LESS THAN \$100 GIVEN AS PERSONAL GIFT IN ANOTHER COUNTRY IN ACCORDANCE WITH CULTURAL PROTOCOL
10. GIFTS GIVEN OR RECEIVED AS PART OF A BUSINESS, CIVIC, RELIGIOUS, FRATERNAL, PERSONAL, ETC. RELATIONSHIP:
 - UNRELATED TO THE PERSON'S PUBLIC SERVICE OR POSITION AND
 - NOT GIVEN FOR THE PURPOSE OF LOBBYING
11. MEAL, BEVERAGE & TRANSPORTATION EXCEPTION FOR ATTENDANCE AT MEETING OF ENTITY WITH WHICH ASSOCIATED
12. PUBLIC SERVANT "OFFICIAL DUTY" MEAL AND BEVERAGE EXCEPTION

**GIFTS TO NONPARTISAN LEGISLATIVE OR PUBLIC
SERVANT ORGANIZATIONS**

§§ 120C-303(d) & (e)

GIFTS ARE ALLOWED IF THEY ARE MADE TO

A NONPARTISAN STATE, REGIONAL, NATIONAL, OR
INTERNATIONAL ORGANIZATION

OF WHICH THE GENERAL ASSEMBLY OR A PUBLIC
SERVANT'S AGENCY IS A MEMBER OR

A LEGISLATOR, LEGISLATIVE EMPLOYEE, OR PUBLIC
SERVANT IS A MEMBER OR PARTICIPANT BY
VIRTUE OF THAT PERSON'S PUBLIC POSITION

**GIFTS TO NONPARTISAN LEGISLATIVE OR PUBLIC
SERVANT ORGANIZATIONS**

§§ 120C-303(d) & (e)

NOTE THIS EXCEPTION ALLOWS GIFTS TO
THE *ORGANIZATION*, NOT THE INDIVIDUAL

IT INCLUDES “AFFILIATED ORGANIZATIONS”
OF THE MAIN ORGANIZATION

GIFTS TO SUCH ORGANIZATIONS DO NOT
CONSTITUTE A VIOLATION OF 138A-32(c)

-- SO THE PERMISSIBLE DONORS ARE LIMITED TO
LOBBYISTS & LOBBYIST PRINCIPALS, *NOT* “INTERESTED
PERSONS”

GIFTS EXCEPTIONS -- *NOT*

THERE IS NO SMALL-GIFT OR
“DE MINIMIS” GIFT EXCEPTION.

SOME PEOPLE CONFUSE THE \$10
LOBBYING REPORTING THRESHOLD
IN *SOME SITUATIONS* TO A SMALL-
GIFT EXCEPTION – IT IS *NOT*.

**THE “FOOD & BEVERAGE”
EXCEPTION
138A-32(e)(1)**

- i. APPLIES TO ALL CATEGORIES OF DONORS — L, LP, IP, LL
- ii. LIMITED TO THE ACCEPTANCE OF *FOOD AND BEVERAGES* FOR IMMEDIATE CONSUMPTION -- NO TRAVEL OR TRINKETS
- iii. NEED NOT BE RELATED TO PUBLIC DUTIES OR PARTICIPATION IN A MEETING OR CONFERENCE

“FOOD & BEVERAGE”
EXCEPTIONS**

- 1. Open meeting of public body so long as the meeting is noticed under the Open Meetings Law
- 2. Gathering of an organization
 - a. At least 10 individuals attend.
 - b. Open to the general public.
 - c. Sign or other communication displayed at gathering that lets general public know the gathering is open

“Food & Beverage” Exception

3. Gathering of person or governmental unit

a. Invitees

- i. Entire board of public servant;
- ii. At least 10 public servants;
- iii. All House or Senate members;
- iv. All members of county or municipal delegation;
- v. Recognized legislative caucus;
- vi. Committee or Commission of the General Assembly; OR
- vii. All legislative employees; *AND*

b. At least 10 people associated with person or governmental unit *actually* attend; *OR*

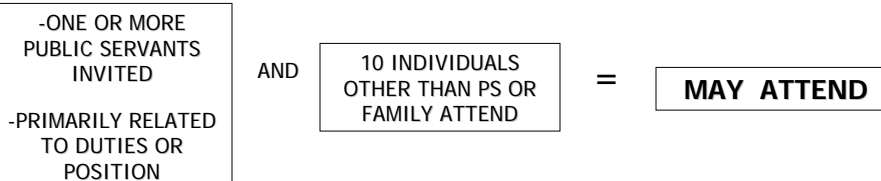
c. All individuals associated with person or governmental unit who are located in NC are notified & invited

• “Invited”

- Written
- From at least 1 host or sponsor
- Date, time, location
- At least 24 hours in advance
- Statement of whether or not gathering meets “Food & Beverage” Exception, *if*
 - Known at time of invitation that a sponsor is a lobbyist or lobbyist principal

PUBLIC SERVANT MEAL & BEVERAGE EXCEPTION -- 138A-32(e)(12)

- i. APPLIES ONLY TO PUBLIC SERVANTS
- ii. EVENT MUST BE PRIMARILY RELATED TO OFFICIAL DUTIES
- iii. APPLIES TO ALL CATEGORIES OF DONORS — L, LP, IP, LL
- iv. LIMITED TO THE ACCEPTANCE OF FOOD AND BEVERAGES FOR IMMEDIATE CONSUMPTION -- NO TRAVEL OR TRINKETS



GIFTS OF FOOD, BEVERAGES, AND *MORE*

A. LEADER (DIRECTOR, OFFICER, OR GOVERNING BOARD MEMBER) OR EMPLOYEE/INDEPENDENT CONTRACTOR'S MEETING OR CONFERENCE
EXCEPTION -- G.S. 138A-32(e)(11)

- i. APPLIES TO ALL CLASSES OF RECIPIENTS — LEGISLATORS, LEGISLATIVE EMPLOYEES, PUBLIC SERVANTS
- ii. ALLOWS ACCEPTANCE FROM REGISTERED LOBBYIST PRINCIPALS
 - THAT ARE THE BUSINESS OR NONPROFIT W/WHICH ASSOCIATED, OR
 - THAT ARE GIVING MONEY TO A BUSINESS OR NONPROFIT TO PURCHASE ITEMS
- iii. ALLOWS ACCEPTANCE OF MEAL, BEVERAGE, & **TRANSPORTATION**
- iv. FOOD, ETC. PROVIDED DURING MEETING OR CONFERENCE
- v. AVAILABLE TO ALL ATTENDEES OF THE SAME CLASS AS RECIPIENT

B. "MEETING" EXCEPTION -- G.S. 138A-32(e)(3): "REASONABLE ACTUAL EXPENSES" FOR FOOD, BEVERAGES, REGISTRATION, TRAVEL, LODGING, OTHER INCIDENTAL ITEMS OF NOMINAL VALUE, AND ENTERTAINMENT

- i. APPLIES ONLY TO EXPENSES PAID BY A LOBBYIST PRINCIPAL, NOT A LOBBYIST OR "INTERESTED PERSON"
- ii. MEETING MUST:
 - BE ATTENDED FOR AT LEAST 10 PARTICIPANTS,
 - HAVE A FORMAL AGENDA, AND
 - NOTICE MUST BE GIVEN AT LEAST 10 DAYS IN ADVANCE.
- iii. ALL FOOD, BEVERAGES, TRANSPORTATION, OR ENTERTAINMENT MUST BE PROVIDED:
 - TO ALL ATTENDEES OR DEFINED GROUPS OF 10 OR MORE
 - AS PART OF THE MEETING OR "IN CONJUNCTION WITH" THE MEETING
 - ENTERTAINMENT MUST BE INCIDENTAL TO THE PRINCIPAL AGENDA

MEETING EXCEPTION -- G.S. 138A-32(e)(3)

i. Educational Meeting?

Primarily related to your public duties and responsibilities?

Primary purpose to educate?

ii. Purpose to speak or participate on a panel?

Are you a "bona fide" speaker?

iii. Legislator or legislative employee's attendance at a meeting of a nonpartisan legislative organization of which:

a. GA is a member, or

b. The legislator or legislative employee is:
-a member or participant by virtue of his or her public position, or
-a member of a board, agency, or committee of the organization.

iv. Public Servant's attendance at a meeting as a member of a board, agency, or committee of nonpartisan organization, and:

a. The PS's agency is a member, or

b. The PS is a member or participant by virtue of his/her public position.

C. "REIMBURSEMENT EXCEPTION" -- G.S. 138A-32(f)

i. IF GIFT IS THE TYPE OF EXPENSE:

- THAT WOULD OTHERWISE BE REIMBURSABLE BY THE EMPLOYING ENTITY

THEN THAT GIFT, BY DEFINITION, WILL BE CONSIDERED A GIFT TO THE STATE AND MAY BE ACCEPTED BY A PUBLIC SERVANT.

ii. THE PUBLIC SERVANT MUST RECEIVE APPROVAL FROM HIS OR HER EMPLOYING ENTITY TO ACCEPT SUCH ITEMS ON BEHALF OF THE STATE.

iii. AS LONG AS THE TYPE OF ITEMS OR EXPENSES IS REIMBURSABLE, ITEMS EXCEEDING STATE REIMBURSEMENT RATE MAY BE ACCEPTED.

VIII. LOBBYING LAW -- G.S. CHAPTER 120C

- CLOSED “GOODWILL LOOPHOLE”
- ESTABLISHED REGULATION OF EXECUTIVE BRANCH LOBBYING
- REQUIRES REGISTRATION OF LOBBYISTS, LOBBYIST PRINCIPALS, AND LIAISON PERSONNEL
- REQUIRES QUARTERLY REPORTING OF EXPENDITURES
 - BUT *MONTHLY* REPORTING OF REPORTABLE EXPENDITURES RELATING TO LEGISLATIVE ACTION WHILE THE GENERAL ASSEMBLY IS IN SESSION
- INCLUDES ADDITIONAL RESTRICTIONS ON LOBBYIST ACTIVITY — REVOLVING DOOR, SERVICE AS A CAMPAIGN TREASURER OR ASST., SERVICE ON CERTAIN BOARDS

LOBBYING LAW – LIAISON PERSONNEL

120C-100(a)(8) & 120C-500

WHO ARE “LIAISON PERSONNEL”?

“Any State employee, counsel employed under G.S. 147-17, or officer whose principal duties, in practice or as set forth in that person’s job description, include lobbying designated individuals.”

G.S. 120C-100(a)(8)

“Designated individuals” are legislators, legislative employees, or public servants.

G.S. 120C-100(a)(2)

LOBBYING LAW – LIAISON PERSONNEL

120C-100(a)(8) & 120C-500

So liaison personnel are *like* “lobbyists” for the State.

But they are NOT lobbyists.

They have some of the obligations of lobbyists, but they are NOT lobbyists.

G.S. 120C-100(10) & 120C-501(a)

They are sometime referred to as “legislative liaisons.”

LOBBYING LAW – LIAISON PERSONNEL

120C-100(a)(8) & 120C-500

What are some of their obligations?

- **Registration:** they have to register with the Secretary of State per 120C-200
- **Reporting:** they have to file reports with the Secretary of State per 120C-402
- **Gift Ban:** they are subject to the general gift ban regarding legislators & legislative employees per 120C-303

G.S. 120C-501

LOBBYING LAW – LIAISON PERSONNEL 120C-100(a)(8) & 120C-500

Who must designate liaison personnel?

- Generally, all agencies and constitutional officers of the State **MUST** designate liaison personnel to lobby for legislative action
 - This includes all boards, departments, divisions, UNC constituent institutions, community colleges, and other units of government in the executive branch.
- The Judicial Branch must designate at least one and no more than four liaison personnel.**
- But this provision does not apply to either
 - Units of local government, or
 - State agencies or boards with no staff

LOBBYING LAW – LIAISON PERSONNEL 120C-100(a)(8) & 120C-500

No more than two persons may be designated as liaison personnel for each agency or constitutional officer of the State.

State agencies or constitutional officers may **not hire contract lobbyists.****

PERSONS EXEMPTED FROM CHAPTER 120C

(Article 7, 120C-700)

Except for the miscellaneous reporting requirements of Article 8, the Lobbying Law does not apply to the following situations:

- Individuals expressing personal opinions
- Persons appearing before committees, etc., by invitation
- Elected or appointed officials or employees of the State, U.S., a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to the office or public duties
- Persons performing professional services (e.g., bill drafting or giving legal advice)
- Persons engaging in the acquisition & publication of the news
- Designated individuals while acting in their official capacity
- Persons responding to inquiries from designated individuals
- Political committees & their employees or contracted service providers

120C-800: IN ADDITION TO LOBBYIST, LOBBYIST PRINCIPAL, AND LEGISLATIVE LIAISON REPORTING REQUIREMENTS OF CHAPTER 120C, ARTICLE 8 REQUIRES REPORTING OF THE FOLLOWING EXPENDITURES BY OTHERS TO LEGISLATORS, LEGISLATIVE EMPLOYEES, AND PUBLIC SERVANTS:

- (A) REPORTABLE EXPENDITURES MADE FOR THE PURPOSE OF LOBBYING OF OVER \$200 PER QUARTER, PER DONOR
 - IF PERSON MAKING EXPENDITURE AND RECIPIENT ARE OUTSIDE NC WHEN EXPENDITURE ACCEPTED, RECIPIENT MUST REPORT GIFT TO SECRETARY OF STATE OR ON SEI.
- (B) SCHOLARSHIP (“GRANT-IN-AID TO ATTEND MEETING”) VALUED AT OVER \$200 PER DONOR THAT IS “RELATED TO PERSON’S PUBLIC POSITION”
 - IF PERSON MAKING EXPENDITURE IS OUTSIDE NC, RECIPIENT MUST REPORT GIFT TO SECRETARY OF STATE OR ON SEI.
- (C) EXEMPTS ITEMS PAID FOR BY STATE, GIFTS FROM FAMILY, GIFTS ASSOCIATED WITH RECIPIENT OR FAMILY’S EMPLOYMENT, CAMPAIGN CONTRIBUTIONS.

State Ethics Commission
Contact Information

- **Mailing Address:**
1324 Mail Service Center
Raleigh, NC 27699-1324
- **Street Address:**
116 W. Jones Street
Raleigh, NC 27603
- **State Courier:** 51-01-00
- **Telephone and Fax:**
Phone: (919) 807-4620
Fax: (919) 807-4619
- **E-mail:** ethics.commission@ncmail.net
- **Web Site:** <http://www.ethicscommission.nc.gov>